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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92032341
Party	Defendant MICHEL FARAH
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Attachments	Reply in support Motion new evidence 081607.pdf ( 3 pages )(17418 bytes )

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESPHARMA)	)	
	)	
Petitioner,	)	Cancellation No. 92032341
	)	Mark: OMIC PLUS
v.	)	Reg. No. 2,447,970
	)	
MICHEL FARAH	)	
	)	
Registrant.	)	
_____	)	

REGISTRANT’S REPLY IN SUPPORT OF ITS MOTION TO REOPEN  
TESTIMONY PERIOD TO INTRODUCE NEWLY DISCOVERED EVIDENCE

Petitioner’s response in opposition to the motion to reopen the testimony period to introduce evidence from the civil action does not challenge, and apparently concedes, the following points:

1. The documents from the civil action sought to be admitted as evidence in this proceeding establish facts that are not only relevant but of significant importance to the determination to be made in this proceeding.
2. The evidence that registrant seeks to introduce is relevant to this proceeding, as it constitutes admissions by Petitioner, Pramil, regarding the rights owned by Registrant, Farah, and asserted by Farah’s exclusive licensee, and Pramil’s infringement of the mark.
3. The evidence that the Farah now seeks to introduce did not exist until long after the close of the testimony period and thus could not have been discovered prior to the close of the testimony period through the exercise of reasonable diligence.

4. Although Pramil has been aware that both a default judgment and a permanent injunction have been issued against it, and although a decision on damages is pending against it, Pramil has made no effort to contest the sufficiency of service of process or the default or the injunction before the Southern District of Florida.

5. The permanent injunction entered by the district court prohibits *any* infringement of the OMIC PLUS mark by Pramil, and *any* use of a trademark by Pramil that falsely represents connection with Farah. To the extent that Pramil contends that confusion may exist between its claimed mark OMIC and Farah's registered mark OMIC PLUS, Pramil's use of the OMIC mark would constitute a violation of the injunction.

6. Pramil has not articulated any reason why the default judgment and the permanent injunction entered against it by the district court, as final adjudications, should not be considered binding upon the Board. *See Lu Soro V. Citigroup*, 2006 TTAB LEXIS 307, 3-4 (TTAB 2006) ("The district court decision in the contempt proceeding established that respondent had priority of the CITIGROUP mark or trade name and that petitioner is prohibited by the terms of the permanent injunction from using CITICORP or any mark or trade name confusingly similar, which includes the mark or trade name CITIGROUP. Due to the commonality of issues in both proceedings, this ruling, which was a final adjudication, is binding on the Board.").

Accordingly, the recently entered injunction now pending against the Pramil has a substantial bearing upon this proceeding, and the issues in this proceeding cannot be properly decided without consideration of the district court's order.

Respectfully submitted this 16th day of August, 2007.

/s/David M. Rogero/

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Reply was sent by first class mail with proper postage affixed, the 16th day of August, 2007, to the following counsel for petitioner:

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